

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

APR 29 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2010-0030-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
JOHN EDWARD SZABO,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. CR-200200889

Honorable David M. Roer, Judge
Honorable Boyd T. Johnson, Judge

REVIEW DENIED

Law Offices of Harriette P. Levitt
By Harriette P. Levitt

Tucson
Attorneys for Petitioner

H O W A R D, Chief Judge.

¶1 Petitioner John Szabo seeks review of the trial court's denial of his petition for post-conviction relief. For the reasons stated, we deny review.

¶2 Pursuant to a plea agreement, Szabo was convicted of two counts of attempted sexual conduct with a minor. The trial court sentenced him to aggravated, consecutive terms of imprisonment totaling thirty years. Szabo sought relief pursuant to Rule 32, Ariz. R. Crim. P. On November 30, 2005, the court denied relief on all claims but one, granting Szabo's request for a resentencing. On December 22, 2005, the court modified Szabo's sentence of imprisonment and ordered that he would be eligible for release after serving at least one half of the sentence imposed. The court also ordered that a video tape pertinent to the case be transcribed and noted that Szabo had thirty days to file a petition for review with this court. This order was entirely favorable to Szabo. Szabo failed to file a petition for review in this court within the thirty-day period.

¶3 Several years later, Szabo filed a "supplemental" new petition for post-conviction relief, claiming he had failed to file a petition for review to the court of appeals due to ineffective assistance of counsel. The trial court agreed that Szabo's failure to file a timely petition for review "was through no fault of his own" and granted Szabo leave "to file a delayed 'Petition for Review' as to the ruling issued . . . on December 22, 2005" but "otherwise den[ied] any further relief requested by [Szabo.]"

¶4 In his petition for review, Szabo does not address any issues ruled upon in the trial court's December 22, 2005, order. Rather, he asks this court to review the court's denial of relief on most of his claims in its November 28, 2005, order. But the trial court only granted Szabo leave to file a delayed petition for review of the December 22, 2005, ruling, not the ruling of November 28. Consequently, his petition for review of issues the court had ruled upon on November 28, 2005, is untimely and we deny review.

See Ariz. R. Crim. P. 32.9(c) (petition for review shall be filed with appellate court no more than thirty days after final decision of trial court on petition for post-conviction relief).

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Philip G. Espinosa

PHILIP G. ESPINOSA, Presiding Judge

/s/ Virginia C. Kelly

VIRGINIA C. KELLY, Judge